

AMENDED IN SENATE AUGUST 23, 2005

Senate Constitutional Amendment

No. 15

Introduced by Senators McClintock and Florez

(Principal coauthor: Senator Hollingsworth)

(Principal coauthor: Assembly Member La Malfa)

(Coauthors: Senators Aanestad, Ackerman, Ashburn, Battin, Campbell, Cox, Denham, Dutton, Maldonado, Margett, Morrow, and Poochigian)

(Coauthors: Assembly Members Aghazarian, Benoit, Blakeslee, Bogh, Cogdill, DeVore, Emmerson, Garcia, *Harman*, Haynes, Shirley Horton, Houston, Huff, Keene, La Suer, Leslie, Maze, McCarthy, Mountjoy, Nakanishi, Negrete McLeod, ~~Parra~~, *Niello*, Plescia, Sharon Runner, Spitzer, Strickland, Tran, Umberg, Villines, Walters, and Wyland)

July 13, 2005

Senate Constitutional Amendment No. 15—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 19 of Article I thereof, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

SCA 15, as amended, McClintock. Eminent domain: condemnation proceedings.

The California Constitution authorizes governmental entities to take or damage private property for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. It also authorizes the Legislature to provide for possession by the condemnor following commencement of the eminent domain proceedings upon deposit in court, and prompt

release to the owner, of the money determined by the court to be the probable amount of the just compensation.

This measure would ~~add a condition~~ *provide* that private property may be taken or damaged by eminent domain proceedings only for a stated public use ~~and only upon an independent judicial determination on the evidence that the condemnor has proven that no reasonable alternative exists~~. The measure would *also* require that the property be owned and occupied by the condemnor, except as specified, and used only for the stated public use.

This measure would also provide that if the property ceases to be used for the stated public use, the former owner, or a beneficiary or an heir, who has been designated for this purpose, would have the right to reacquire the property for ~~the compensated amount or~~ its fair market value, ~~whichever is less~~, before the property may be *otherwise* sold or transferred. *This measure would further require a county assessor, upon property being so reacquired, to appraise that property for purposes of property taxation at its adjusted base year value as had been last determined at the time the property was acquired by the condemnor.*

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

- 1 WHEREAS, This measure shall be known and may be cited as
- 2 “The Homeowner and Property Protection Act”; and
- 3 WHEREAS, Eminent domain has been subject to widespread
- 4 abuse in California, whereby local governmental entities have
- 5 condemned property and transferred it, by sale, lease, or
- 6 otherwise, to the control, management, or exploitation of private
- 7 entities for private use and profit on the theory that generalized
- 8 public benefits will flow therefrom; and
- 9 WHEREAS, The United States Supreme Court, in *Kelo v. City*
- 10 of New London, ___ U.S. ___ (2005), has held that the United
- 11 States Constitution does not prevent the transfer of property,
- 12 seized through eminent domain, to private entities for private
- 13 profit; and
- 14 WHEREAS, The rights guaranteed in the California
- 15 Constitution are not dependent on rights guaranteed under the
- 16 United States Constitution (Section 24 of Article I of the
- 17 California Constitution), and the California Constitution should
- 18 protect the property rights of Californians to a greater degree

1 than does the United States Constitution; nor should the term
2 “public use” in the California Constitution be construed as
3 identical to that phrase as employed in the Fifth Amendment to
4 the United States Constitution; and

5 WHEREAS, It is the intent of the Legislature that private
6 property shall not be taken or damaged for the use, exploitation,
7 or management of any private party, including, but not limited to,
8 the use, exploitation, or management of property taken or
9 damaged by a corporation or other business entity for private
10 profit, as is currently permitted under the United States
11 Constitution under *Kelo v. City of New London*, __ U.S. __
12 (2005); and

13 WHEREAS, It is not the intent of this amendment to prevent
14 the rental of space in a government building or any other
15 government-owned property for incidental commercial
16 enterprises, including, but not limited to, gift shops, newsstands,
17 ~~or shoeshine stands~~ *shoeshine stands, and private nonprofit*
18 *entities such as churches and other religious and civic*
19 *organizations; and*

20 WHEREAS, This amendment shall apply only to
21 condemnation actions that are completed after this amendment
22 goes into effect; now, therefore, be it

23 *Resolved by the Senate, the Assembly concurring*, That the
24 Legislature of the State of California at its 2005-06 Regular
25 Session commencing on the sixth day of December 2004,
26 two-thirds of the membership of each house concurring, hereby
27 proposes to the people of the State of California, that the
28 Constitution of the State be amended as follows:

29 That Section 19 of Article I thereof is amended to read:

30 SEC. 19. (a) Private property may be taken or damaged *only*
31 for a stated public use *and* only when just compensation,
32 ascertained by a jury unless waived, has first been paid to, or into
33 court for, the owner. Private property may not be taken or
34 damaged for private use.

35 ~~(b) Private property may be taken by eminent domain only for~~
36 ~~a stated public use and only upon an independent judicial~~
37 ~~determination on the evidence that the condemnor has proven~~
38 ~~that no reasonable alternative exists. Property taken by eminent~~

39 *(b) Property taken by eminent domain shall be owned and*
40 *occupied by the condemnor, or another governmental agency*

1 *utilizing the property for the stated public use by agreement with*
2 *the condemnor, or may be leased only to entities that are*
3 *regulated by the Public Utilities Commission. All property that is*
4 *taken by eminent domain shall be used only for the stated public*
5 *use.*

6 (c) If any property taken through eminent domain after the
7 effective date of this subdivision ceases to be used for the stated
8 public use, the former owner of the property or a beneficiary or
9 an heir, if a beneficiary or heir has been designated for this
10 purpose, shall have the right to reacquire the property for the
11 ~~compensated amount or the fair market value of the property;~~
12 ~~whichever is less,~~ before the property may be *otherwise* sold or
13 transferred. *Notwithstanding subdivision (a) of Section 2 of*
14 *Article XIII A, upon reacquisition the property shall be appraised*
15 *by the assessor for purposes of property taxation at its base year*
16 *value, with any authorized adjustments, as had been last*
17 *determined in accordance with Article XIII A at the time the*
18 *property was acquired by the condemnor.*

19 (d) The Legislature may provide for possession by the
20 condemnor following commencement of eminent domain
21 proceedings upon deposit in court and prompt release to the
22 owner of money determined by the court to be the probable
23 amount of just compensation.

24
25
26 CORRECTIONS: _____

27 Heading Line 4.
28 _____